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U.S. Citizenship
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Services

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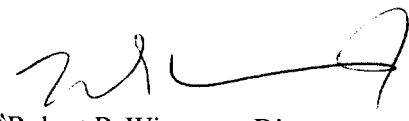
IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration
and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Delaware that is operating as a provider of business-to-business e-commerce software applications. The petitioner claims that it is the affiliate of the beneficiary's foreign employer, located in Leeds, England. The petitioner now seeks to employ the beneficiary for three years as a web developer.

The director denied the petition concluding that the beneficiary had not been employed abroad by a qualifying employer in a specialized knowledge capacity for the requisite one year within the three years prior to filing the petition.

Counsel subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded it to the AAO for review. On appeal, counsel contends that Citizenship and Immigration Services (CIS) improperly interpreted the relevant sections of the Immigration and Nationality Act (the Act) and the accompanying regulations when determining that the beneficiary was not employed abroad in a specialized knowledge capacity. Counsel further asserts that CIS applied an incorrect standard of law to its review of the nonimmigrant petition, "exceeded the scope of its authority," and failed to fully consider the submitted evidence. Counsel submits a lengthy brief in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue in the present proceeding is whether the beneficiary's prior year of employment abroad was in a position that involved specialized knowledge as required in the regulation at 8 C.F.R. § 214.2(l)(3)(iv).

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In a letter dated June 13, 2001 and submitted with the nonimmigrant petition, the petitioner stated that the beneficiary has been employed abroad as a web developer, developing, maintaining and enhancing web applications. The petitioner provided the following explanation of the beneficiary's job responsibilities:

Specifically, he has been responsible for integrating the sales and order pipelines of 4imprint [a client of the beneficiary's foreign employer] for orders taken over a web site by designing and developing the application that processes orders transferred from transaction middleware. With this project, [the beneficiary] obtained specialized and advanced knowledge regarding the backend database system for 4imprint designed by [the beneficiary's foreign employer]. In addition to developing this e-commerce application that integrates the Sales and Order pipeline of 4imprint with Lands End for orders taken over a shared web site, [the beneficiary] has also been responsible for designing a portal application for 4imprint which allows mobile sales brokers to access a customized version of 4imprint's e-commerce website. He has also developed a major part of the web schemes engine for 4imprint's e-commerce web site, allowing the look, feel and content of the web site to be customized for a particular customer. This system allows customized content for different users and [the beneficiary] has developed browser-based administration tools to allow the customization of the content by 4imprint staff.

Through this position, [the beneficiary] has acquired specialized and advanced knowledge regarding the company, its customers, policies, procedures, proprietary technology, etc. He has acquired experience with various software languages, tools and systems. In particular, [the beneficiary] is specifically familiar with [the foreign employer's] proprietary set of tools and COM objects that were developed in-house, serve as the core engine behind the company's web applications, and facilitate in their development. He utilizes these tools and COM objects on a daily basis in designing and developing web applications. Moreover, through his employment with [the foreign employer] in the U.K., [the beneficiary] has acquired specialized and advanced knowledge regarding the company's major client and

business partner, 4imprint. The specialized knowledge that [the beneficiary] has obtained includes advanced knowledge of the scaleable e-business systems and associated bank office fulfillment and reporting systems specifically developed by [the foreign employer] for 4imprint which are used in 4imprint's business as a direct marketer of imprinted promotional products.

In a request for evidence dated August 1, 2001, the director asked that the petitioner submit evidence establishing the following: (1) how the beneficiary's training is exclusive and unique in comparison to other web developers employed by either the foreign company or an unrelated company; (2) the amount of training and experience required for a web developer to be considered to have specialized knowledge; and (3) that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by an unusual quality not generally known by other web developers. The director also requested that the petitioner submit a detailed description of the beneficiary's daily job duties including a percentage allocation of the amount of time spent on each, and any documents, diplomas, or certificates verifying the beneficiary's completion of courses related to the foreign company's products, processes, or procedures.

On September 4, 2001, the petitioner submitted a lengthy response to the director's request for evidence. As the petitioner's letter is part of the record, it will not be entirely repeated herein. The petitioner stated that 75% of the beneficiary's time employed abroad was spent working on the development of the vendor integration program for 4imprint and Lands End, with the remainder of time spent developing a portal website for 4imprint and its recent acquisition, Adventures in Advertising. The petitioner provided the following additional explanation regarding the beneficiary's employment:

As noted above, [the beneficiary's foreign employer] is an expert in developing systems and software for catalog-based server systems and was hired by 4imprint to develop its customized and high-speed back office systems. With hundreds of different ways to process an order at 4imprint, various systems needed to be developed and implemented by [the beneficiary's foreign employer] to effectively service 4imprints's programs. In order to be the best in the business, 4imprint has spent close to \$5 million dollars [sic] to develop and implement these highly confidential and proprietary programs with the assistance and expertise of [the beneficiary's foreign employer]. The back office function developed by [the beneficiary's foreign employer] for 4imprint is called OASIS and stands for Order Administration and Sales Information System. A web developer (or other computer professional) cannot work on 4imprint projects unless that individual has working knowledge and a specialized understanding of OASIS and how it works. Accordingly, with his work for 4imprint for the company abroad, [the beneficiary] has obtained specialized and advanced knowledge.

* * *

[The beneficiary] has been the primary . . . web developer assigned to [the 4imprint] project and he has been working on this project for almost one year. In this capacity, [the beneficiary] has been required to utilize his specialized knowledge of 4imprint, OASIS, and [the foreign company's] tools to develop an efficient and accurate e-commerce system that integrates the Sales and Order pipeline of 4imprint with Lands End for orders taken over each other's website. More specifically, [the beneficiary] has been utilizing his specialized and

advanced knowledge to develop a specialized system where a customer can go to 4imprint's website to order its imprinted products. . . . [The beneficiary] has been working on a very complicated and specialized web development system for 4imprint and Lands End which will allow the back offices of both 4imprint and Land Ends to get this order, as well as to give real-time information to the customer about availability, inventory, etc. In order to develop and implement such a specialized system, [the beneficiary] has been required to obtain in-depth and confidential information about the computer and back office (accounting, stock, inventory) of both 4imprint and Lands End. It is only with this massive amount of knowledge and information that [the beneficiary] has been able to develop this complex system which allows for the ability of the consumer to more easily purchase and receive items, and for 4imprint and Lands End to process, fill and bill the orders directly received from the Internet. Although it may sound easy to split who gets which order, it is actually quite a tedious and complex process which had required numerous months of work on the part of [the beneficiary] to successfully develop this vendor integration software.

The petitioner further states that no U.S. web developer would possess "this unique, uncommon and noteworthy knowledge," and explains that although other web developers employed by the foreign company "have some of the knowledge that [the beneficiary] possesses, they do not have the vendor integration knowledge that [the beneficiary] possesses."

In a decision dated October 29, 2001, the director concluded that the beneficiary had not been employed abroad in a specialized knowledge capacity for the requisite one year within the three years prior to filing the nonimmigrant petition. The director noted that the petitioner failed to provide a thorough explanation of how the beneficiary's work experience prior to employment with the foreign entity relates to specialized knowledge. The director also stated that because the beneficiary has worked for the foreign entity for seventeen months, he had only a short amount of time, five months, during which to develop his specialized knowledge as a web developer. The director concluded that it was unlikely the beneficiary could develop this knowledge in a short period of time. Lastly, the director noted that it did not appear that the beneficiary had a full year of employment in a specialized knowledge capacity, as a result of the petitioner's claim that it would take twelve months to train a new employee to the level of a web developer, and the beneficiary has only been employed for seventeen months. Consequently, the director denied the petition.

In an appeal filed November 29, 2001, counsel claims that the standard used by CIS in denying the instant petition was incorrect as a matter of law. Counsel specifically states that CIS failed to properly consider sections 101(a)(15)(L) and 214(c)(2)(B) of the Act, and the regulation at 8 C.F.R. § 214.2(l)(3)(iv). Counsel states that the director instead applied the following "incorrect standard":

For purposes of section 1101(a)(15)(L) of this title, an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has *more than one year of* specialized knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

(Emphasis in original). Counsel explains that the director "looked beyond the one continuous year requirement of the statutes and regulations" to reach the conclusion that the beneficiary was not employed by the foreign entity in a specialized knowledge capacity.

Counsel also claims that the director did not appropriately analyze the record, and “ignored pertinent information regarding the [seventeen] months of specialized knowledge [the beneficiary obtained abroad]” Counsel states that the director incorrectly compared the beneficiary’s seventeen months of employment with the twelve months necessary to train a new employee as a web developer. Counsel states that during the beneficiary’s seventeen months of employment abroad, the beneficiary has been obtaining specialized and advanced knowledge of the company’s proprietary tools and client relationship with 4imprint. Counsel further states that the beneficiary is responsible for developing the specialized vendor integration software for 4imprint and Lands End. Counsel contends that the beneficiary has specialized knowledge of the foreign company’s “confidential and proprietary systems and tools,” and states that the beneficiary’s knowledge is more advanced than that of other web developers who use more generic systems, such as Visual Basic and C++. Counsel provides a description of the beneficiary’s responsibilities with 4imprint similar to that previously cited above.

In addition, counsel submits a copy of a 1994 Immigration and Naturalization (now CIS) memorandum, which outlines the requirements for specialized knowledge. Memorandum from James A. Puleo, Acting Associate Commissioner, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). Counsel states that the director failed to follow the guidelines provided in the memorandum, and contends that the director incorrectly considered whether U.S. employees were available to perform the job duties of the beneficiary.

On review, the petitioner has not demonstrated that the beneficiary possesses “specialized knowledge” as defined in § 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner’s description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary’s knowledge of the business’s product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, “the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the

¹ Although the cited precedents pre-date the current statutory definition of “specialized knowledge,” the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be “proprietary,” the 1990 Act did not significantly alter the definition of “specialized knowledge” from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of “[v]arying [*i.e.*, not specifically incorrect] interpretations by INS,” H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

classifications sought.” Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business’ operation.

Id. at 53.

It should also be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc.*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. at 15. The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. REP. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Id.* at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of

persons to qualify for the ‘L-1’ visa” rather than the “key personnel” that Congress specifically intended. 18 I&N Dec. at 53; *see also*, 1756, *Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to “key personnel” and “executives.”)

In the instant matter, while the petitioner provided a detailed description of the beneficiary’s job responsibilities in relation in the foreign company’s client, 4imprint, the record does not sufficiently establish that the beneficiary’s job responsibilities as a web developer exceed the level of a skilled worker. Counsel’s claim that the beneficiary has specialized knowledge is based on the beneficiary’s seventeen months of employment, during which he “has been obtaining specialized and advanced knowledge regarding the company’s proprietary tools, its client relationship with 4imprint, and most importantly, the specialized vendor integration software for 4imprint/Lands End that *he* has been developing for the company for over 12 months.” (Emphasis in original). However, it appears from the record that the beneficiary possesses the skills and experience necessary to provide a specialized service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

When comparing the beneficiary’s knowledge of the foreign company’s proprietary tools to that of other web developers employed by the foreign company, it appears that the beneficiary possesses knowledge that is generally known throughout the organization, rather than possessing special knowledge of the foreign company’s product that would characterize him as an employee of “crucial importance” or “key personnel.” This conclusion is further substantiated by the petitioner’s response to the director’s request for evidence, in which the petitioner outlined the foreign company’s tools for developing web applications, and stated that “[a] web developer for [the foreign company] is responsible for not only knowledge of each of these tools, but also for knowledge of the interaction of these different items together.” The petitioner explained that only a web developer who has worked for the foreign company would be familiar with these tools, thereby implying that all web developers employed by the foreign company possess this knowledge. When applying the standard in *Matter of Penner*, the beneficiary does not appear to have unusual duties, skills or knowledge beyond that of another web developer employed by the foreign entity. Rather, the beneficiary, like the foreign company’s other web developers, is employed primarily for his skills and knowledge, which enable him to produce a product through skilled labor and contribute to the company’s overall economic success. 18 I&N Dec. at 53.

Although the petitioner explains in its response to the director’s request for evidence that the beneficiary has knowledge of the foreign company’s “highly confidential and proprietary” program OASIS, Order Administration and Sales Information System, there is no evidence that the beneficiary’s knowledge of this system is unique or “special.” The petitioner only states that “[a] web developer (or other computer professional) cannot work on 4imprint projects unless that individual has a working knowledge and a specialized understanding of OASIS and how it works.” Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Also, the petitioner does not provide evidence, such as a course certification, that the beneficiary has actually received training on OASIS. The petitioner essentially makes the circular argument that because knowledge of OASIS is essential for working with 4imprint, and the beneficiary works for 4imprint, the beneficiary therefore has knowledge of OASIS. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

Counsel also claims that the beneficiary has specialized knowledge as a result of his relationship with the client, 4imprint, and because of his creation of the client's vendor integration system. Counsel's assertions, however, are not supported by the record. The AAO acknowledges that the beneficiary likely possesses knowledge particular to the client. This knowledge, however, is not specialized. Rather, it is knowledge gained as a result of the beneficiary's working relationship with 4imprint, which would be acquired by any web developer in the beneficiary's position in order to successfully perform his or her responsibilities. Moreover, the vendor integration system developed by the beneficiary for 4imprint is simply an example of the beneficiary successfully performing his job as a web developer, or skilled worker. The petitioner has not provided any indication that another web developer, employed by the foreign entity and assigned to 4imprint, would be incapable of creating this system. Again, the petitioner has not demonstrated that the beneficiary's knowledge makes him an employee of crucial importance.

If the petitioner is claiming that the beneficiary's relationship with 4imprint provides him with specialized knowledge of 4imprint's products or techniques, this claim is misplaced. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) states that specialized knowledge is "special knowledge possessed by an individual of *the petitioning organization's* product, service" (Emphasis added). The regulations require that a beneficiary's knowledge pertain to the petitioning organization or the beneficiary's foreign employer. *See* 8 C.F.R. § 214.2(l)(3)(iv). Therefore, the petitioner incorrectly concludes that the beneficiary could possess specialized knowledge as a result of his working relationship with an unrelated company.

Counsel also addresses on appeal a 1994 Associate Commissioner's memorandum as providing guidance for interpreting employment in a specialized knowledge capacity. Specifically, counsel claims that the test for determining specialized knowledge involves an examination of the knowledge possessed by the beneficiary and does not include an analysis of whether there are workers available in the United States to perform the beneficiary's job duties. Counsel contends that CIS ignored this standard and considered whether a United States worker could perform in the beneficiary's position of web developer.

The AAO acknowledges counsel's claim that the analysis for specialized knowledge does not include a review of the availability of United States workers to perform the beneficiary's job duties. The Associate Commissioner specifically notes in the memorandum that the analysis for specialized knowledge involves only a review of the alien's knowledge and not whether there are similarly employed United States workers. He further notes, however, that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." A distinction can be made between the statements offered by the Associate Commissioner. The memorandum allows CIS to consider the beneficiary's knowledge in comparison to the general United States labor market in order to distinguish between specialized and general knowledge. As noted above, this comparison is necessary in order to determine the level of the beneficiary's skills and knowledge and whether the beneficiary's knowledge is actually advanced. Absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to "ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Therefore, while the beneficiary is not held to a standard of possessing knowledge that is not commonly found in the United States labor market, the beneficiary's knowledge must be advanced or special in comparison to the United States workers. Counsel correctly notes that it is irrelevant whether there are workers available in the United States to perform the beneficiary's job duties.

Finally, both counsel and the director appear to also focus on the separate issue of whether the beneficiary was employed in a qualifying capacity by the foreign employer for the requisite one year period prior to filing

the nonimmigrant petition. *See* 8 C.F.R. § 214.2(l)(3)(iv). The record contains inconsistencies regarding the beneficiary's length of employment in a specialized knowledge capacity. The petitioner stated in its September 4, 2001 response to the director's request for evidence that the beneficiary has been assigned as a web developer to the 4imprint project "for almost one year." Considering this was approximately three months after the nonimmigrant petition was filed, it is reasonable to assume that at the time of filing the petition, the beneficiary had not been employed in a qualifying capacity for the requisite year. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Alternatively, counsel claims on appeal that the beneficiary "had worked in a specialized knowledge capacity for the company abroad for 17 months prior to the filing of the L-1B petition by [the petitioner]." The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, evidence that the petitioner creates after CIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See* 1756, Inc. v. Attorney General, *supra* at 16. Based on the evidence presented, it is concluded that the beneficiary was not employed abroad in specialized knowledge capacity. For this reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.